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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,037	08/28/2002	Kenji Morimoto	MTS-3321US	6565
7590	09/11/2007			
Allan Ratner Ratner & Prestia Suite 301 One Westlake Berwyn P O Box 980 Valley Forge, PA 19482-0980				EXAMINER SHIBRU, HELEN
				ART UNIT 2621
				PAPER NUMBER PAPER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/088,037	MORIMOTO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	HELEN SHIBRU	2621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 June 2007.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-5,7,9-13,16-21,25 and 26 is/are pending in the application.  
 4a) Of the above claim(s) 6,8,14,15,22-24 and 27-32 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-5,7,9-11,16-21,25 and 26 is/are rejected.  
 7) Claim(s) 12-13 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.<br>.  | 6) <input type="checkbox"/> Other: _____                          |

***Election/Restrictions***

1. Applicant's election without traverse of group I, claims 1-5, 7, 9-13, 16-21, 25 and 26, in the reply filed on 06/08/2007 is acknowledged.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5, 9-11, 16-21, and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsumi (US Pat. No. 6,038,094) in view of Shinohara (US Pat. No. 5,740,306).

Regarding claim 1, Matsumi discloses a data recording apparatus comprising: inputting means of receiving a data (see abstract and fig. 1);

data converting means of converting the data which is received by said inputting means, into a recording signal (see col. 8 lines 44-52);

recording means of recording the recording signal which is converted by said data converting means, on a predetermined recording medium (see abstract, col. 10 lines 20-40 and lines 55-67);

data rate detecting means of detecting a rate of the data which is received by said inputting means (see claim 1 lines 16-20); and

controlling means of controlling a recording rate of said recording means by using the rate which is detected by said data rate detecting means (see claim 2, col. 10 lines 2-19, col. 16 lines 23-50).

Claim 1 differs from Matsumi in that the claim further requires data rate detecting means of counting of input packets which are received by said inputting means, as intervals of a time corresponding to an integer multiple of a minimum record unit time.

In the same field of endeavor Shinohara discloses the rate identifying circuit extracts transport packets of the program to be recorded from the transport packets received through the input terminal (col. 40 lines 19-31). Shinohara further discloses the identifying circuit detects rates of respective data. special playback data recording area can be used effectively and the playback data rate for the fast playback can be maximized (col. 56 lines 23-55). Shinohara further discloses n lines of sync block data may be generated using m transport packets where m and n are positive numbers (2col. 54 lines 60-67). Shinohara further discloses the group of sync block formats can be separated from each other by using sync block number (col. 34 lines 19-42). Therefore in light of the teaching in Shinohara it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Matsumi by counting input packets in order to monitor a packet flow.

Regarding claim 2, Matsumi discloses special-data producing means of, from the data which is received by said inputting means, producing at least one or more kinds of special-reproduction data (see fig. 4, col. 10 lines 9-19 and lines 55-64, the selector selects Video and Audio data),

said recording means records also the special-reproduction data which is produced by said special-data producing means (see col. 10 lines 20-40), and

said controlling means controls the recording rate in consideration of also an amount of the special-reproduction data which is produced by said special-data producing means (see col. 10 lines 16-19 and lines 37-40, and col. 12 lines 55-67).

Regarding claim 3, Matsumi discloses a data recording apparatus comprising, inputting means of receiving a data (see abstract and fig. 1);

data converting means of converting the data which is received by said inputting means, into a recording signal (see col. 8 lines 44-52);

recording means of recording the recording signal which is converted by said data converting means, on a predetermined recording medium (see abstract, col. 10 lines 20-40 and lines 55-67);

data rate detecting means of detecting a rate of the data which is received by said inputting means (see claim 1 lines 16-20);

rate information outputting means of outputting information of the rate which is detected by said data rate detecting means (see claim 1 and col. 10 lines 20-40); and

controlling means of controlling a recording rate of said recording means by using the rate which is detected by said data rate detecting means (see claim 2, col. 10 lines 2-19, col. 16 lines 23-50).

Claim 3 differs from Matsumi in that the claim further requires data rate detecting means of counting of input packets which are received by said inputting means, as intervals of a time corresponding to an integer multiple of a minimum record unit time.

In the same field of endeavor Shinohara discloses the rate identifying circuit extracts transport packets of the program to be recorded from the transport packets received through the input terminal (col. 40 lines 19-31). Shinohara further discloses the identifying circuit detects rates of respective data. special playback data recording area can be used effectively and the playback data rate for the fast playback can be maximized (col. 56 lines 23-55). Shinohara further discloses n lines of sync block data may be generated using m transport packets where m and n are positive numbers (2col. 54 lines 60-67). Shinohara further discloses the group of sync block formats can be separated from each other by using sync block number (col. 34 lines 19-42). Therefore in light of the teaching in Shinohara it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Matsumi by counting input packets in order to monitor a packet flow.

Claim 4 is rejected for the same reason as discussed in claim 2 above.

Regarding claim 5, Matsumi discloses there are plural kinds of special-reproduction data (see fig. 1), and

said apparatus further comprises switching means of switching the kinds of special-reproduction data which are produced by said special-data producing means (see fig. 1 unit 31 and rejection of claim 2).

Regarding claim 9, Shinohara discloses the said controlling means compares a predetermined reference value with the rate which is detected by said data rate detecting means, to control the recording rate of said recording means (see col. 56 line 61-col. 57 line 14).

Regarding claim 10/(1,2), Shinohara discloses the predetermined reference value is a value which is determined in accordance with a rate of a head data of the recording signal which

is to be recorded by said recording means, in each recording time period (see col. 17 line 66-col. 18 line 21).

Regarding claim 11, Shinohara discloses there are at least two kinds of recording modes in which said recording means records the recording signal, and at intervals of a predetermined time period, when a rate of a data corresponding to the recording signal which is to be recorded by said recording means exceeds even once the predetermined reference value, said controlling means controls the recording rate of said recording means so that all recording signals during the predetermined time period are recorded in a recording mode in which a data of a rate exceeding the predetermined reference value can be recorded (see col. 13 lines 21-36, col. 17 lines 54-65 and col. 30 line 63-col. 31 line 14).

Regarding claim 16/(1,2,3), Shinohara discloses recording means records also the recording rate on the recording medium (see abstract and claim 1 in Shinohara).

Regarding claim 17, Shinohara discloses A data reproducing apparatus comprising at least reproducing means of, by using the recording rate which is recorded on the recording medium by a data recording apparatus according to claim 16, reproducing the recording signal which is recorded on the recording medium (see abstract and cols. 2-3).

Claims 18-20 are rejected for the same reason as discussed in claims 1-3 above.

Claim 21 is rejected for the same reason as discussed in claim 2 above.

Claims 25-26/(18-21) are rejected for the same reasons as discussed in claims 16-17 above respectively.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Matsumi (US Pat. No. 6,038,094) in view of Shinohara (US Pat. No. 5,740,306) in view of Official Notice.

Claim 7 differs from the proposed combination of Matsumi and Shinohara in that the claim further requires, the bit stream is a bit stream configured by a transport packet of an MPEG system of MPEG2 or higher, or a bit stream of a DSS system. Although both Matsumi and Shinohara fails to specifically disclose an MPEG system of MPEG2 or higher, or a bit stream of a DSS system, Official Notice is taken that it is well known for one of ordinary skill in the art at the time the invention was made to use an MPEG system of MPEG2 or higher, or a bit stream of a DSS system in order to create smaller files.

#### *Allowable Subject Matter*

5. Claims 12-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Regarding claim 12, the Prior Art fails to teach or suggest the apparatus of claim 1 including recording means record signal at intervals of a predetermined time period, until a rate of a data corresponding to the recording signal which is to be recorded by said recording means exceeds the predetermined reference value, said controlling means controls the recording rate of said recording means so that the recording signal is recorded in a recording mode corresponding to a rate which does not exceed the predetermined reference value, and, after the rate of the data corresponding to the recording signal which

is to be recorded by said recording means exceeds the predetermined reference value,  
controls the recording rate of said recording means so that the recording signal is recorded  
in a recording mode corresponding to a higher rate which exceeds the predetermined  
reference value.

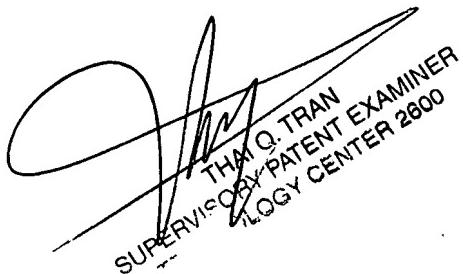
*Conclusion*

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HELEN SHIBRU whose telephone number is (571) 272-7329. The examiner can normally be reached on M-F, 8:30AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THAI Q. TRAN can be reached on (571) 272-7382. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Helen Shibru  
August 20, 2007



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